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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,438	04/12/2004	William M. Drake	40403	4852
27015 7590 03/14/2008 LAW OFFICES OF CHARLES L. THOEMING BIELIN, LAMPE & THOEMING, P.A. TWO CORPORATE CENTRE 1390 WILLOW PASS ROAD SUITE 1020 CONCORD, CA 94520				
EXAMINER				
KATCHEVES, BASIL S				
ART UNIT		PAPER NUMBER		
3635				
MAIL DATE		DELIVERY MODE		
03/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/823,438

**Applicant(s)**

DRAKE, WILLIAM M.

**Examiner**

BASIL KATCHEVES

**Art Unit**

3635

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 29, 31, 50-52 is/are rejected.
- 7) ☒ Claim(s) 4, 6, 8-28, 30, 32-49 and 53-57 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1 and 50 are rejected under 35 U.S.C. 102(e) as being anticipated by  
U.S. Patent No. 6,752,566 to Smith.**

Regarding claim 1, Smith discloses a method of repairing concrete slabs by cutting out a broken planar slab, lifting the broken slab out with less than four lifts and transporting the broken slab away (column 2, lines 25-42), placing a new slab over the substrate, guiding it in and injecting a binding fluid underneath and maintaining a level surface to the surrounding area (column 3, lines 28-39; figs. 22 & 23).

Regarding claim 50, Smith discloses the use of repair on highways (abstract).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2, 26, 27, 29, 31, 51, are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,752,566 to Smith in view of U.S. Patent No. 7,144,191 to Kieranen et al.**

Regarding claims 2, 26, 51, Smith discloses the use of a cutting saw capable of making quarter section cuts but does not disclose particularly the type of saw and any GPS directing of the cutter. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use a cutter of the type claimed herein, such as circular or jig, because these are standard cutting methods commonly used to cut concrete. Kieranen discloses a GPS controlled ground contouring machine having blades (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Smith by using GPS controlled machinery as disclosed by Kieranen to operate the cutting saw in order to cut concrete at a desired contour or at a desired location. Microprocessors are inherently a part of GPS systems and used to transmit and store GPS data.

Regarding claims 27, 29, 31, Smith discloses the removing means as having solid metal (steel) plates (fig. 16: see flat plate portions) having holes therethrough and

lift points (fig. 16: see lift points by cable 117), means for anchoring the plates to the concrete (fig. 22) and crane lifting means (117) interior of the outer edges.

**Claims 3, 5, 7, 52, are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,752,566 to Smith.**

Regarding claim 3, 5, 7, 52, Smith discloses the removing means as having solid metal (steel) plates (fig. 16: see flat plate portions) having holes therethrough and lift points (fig. 16: see lift points by cable 117), means for anchoring the plates to the concrete (fig. 22) and crane lifting means (117) interior of the outer edges. However, Smith does not particularly disclose the lifting capacity of five tons. It would have been obvious to one having ordinary skill in the art at the time the invention was made to be capable of lifting at least five tons since concrete slabs on bridges (abstract) are typically greater than five tons.

### ***Claim Objections***

Claims 4, 6, 8-28, 30, 32-49, 53-57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record does not disclose a repair method and apparatus which includes the limitations of claims 1, 3 and the lifting plate is rectangular with a one to one ratio of holes to solid plate material, and one crane pick point at each corner. Also, the lifting frame having front, back and support members with wheels pivotally mounted to front, fixedly

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mounted to rear, tongue connected to the wheel mounts and means to rotate, lower and raise and fixedly secure the slab to the frame.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited patents listed on the included form PTO-892 further show the state of the art with respect to concrete repair in general.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot, can be reached at (571) 272-6777.

/Basil Katcheves/

Primary Examiner, Art Unit 3635